

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 676 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHANTABEN L DATANIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 676 of 1991
MR RC PATHAK for Petitioner No. 1
Mr. H.C. Patel, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Parmar for Mr.

R.C.Pathak for the petitioner and the learned AGP Mr. H.C. Patel for the respondents. By means of this petition, the petitioner workman has challenged the order passed by the appellate authority under the provisions of the Payment of Gratuity Act, 1972 in Appeal No. 202 of 1989 dated 30th May, 1990. Initially, the petitioner workman has approached the Controlling Authority under the Payment of Gratuity Act, 1972 by filing Application which was rejected by the Controlling Authority by order dated 27th March, 1989. Thereafter, review application was filed by the petitioner before the controlling authority which was heard by the controlling authority and ultimately the controlling authority granted the amount of gratuity of Rs.4485.00 to the petitioner workman by order dated 12.10.1989. Said order passed by the controlling authority has been modified by the appellate authority by reducing the amount of gratuity from Rs.4485.00 to Rs.2760.00.

Learned advocate Mr. Parmar appearing for the petitioner has submitted that the appellate authority has committed gross error in not considering the total length of service from 1970 to 1983; that the appellate authority has ignored the service of the workman from 21.8.1980 to 1983; that the controlling authority has committed gross error in coming to the conclusion that after the promotion in the cadre of work charge employee, according to the PWD Manual, Bombay Civil Service Rules ("BCSRs" for short) are applicable to the workman concerned and, therefore, he is not covered by the definition of section 2(e) of the Payment of Gratuity Act. He has further submitted that the appellate authority has also committed gross error in coming to the conclusion that the the Payment of Gratuity Act is applicable only to the daily wagers and not to the work charge employees.

On the other hand, learned AGP Mr.H.C. Patel has submitted that the appellate authority was right in deciding the matter and was also right in coming to the conclusion that the service rendered by the workman as a daily wager alone is required to be taken into account for the purpose of granting gratuity amount. He has also submitted that the service from 1970-71 and 1979-80 has been rightly excluded by the appellate authority. He has also submitted that the service rendered by the petitioner workman as a work charge employee has rightly been excluded by the appellate authority and, therefore, there is no substance in this petition and the same is required to be dismissed with costs.

I have considered the submissions made by the learned advocates for the parties. I have also considered the orders passed controlling authority as well as the appellate authority. Before the controlling authority, service rendered by the workman as daily wager as well as work charge employee was not disputed. It is an admitted fact that the workman was in service from 1970 to 1983. The workman concerned died on 6th December, 1983 and the present petitioner is the widow of the deceased workman Lavjibhai Datania. It is an admitted fact that the workman worked under the respondents since 1970 and has continued to serve till his death 6th December, 1983. The controlling authority has come to the conclusion that the workman concerned was covered by the definition of 'employee' under the Payment of Gratuity Act, 1972 and the respondent establishment is also covered by the Payment of Gratuity Act, 1972 and, therefore, said Act is applicable to the respondent establishment. According to the provisions made under the Payment of Gratuity Act, 1972, if any workman is governed by the provisions of the BCSRs, then, the Payment of Gratuity Act, 1972 is not applicable to such an employee. Before the Controlling Authority, as regards the date of appointment of the deceased workman, length of total service rendered by the deceased workman is not in dispute and it is also not in dispute that he worked till the date of his death. Before the controlling authority, the respondent establishment has not produced any documents and, therefore, the controlling authority has relied upon the evidence produced by the workman side and has come to the conclusion that the establishment of the respondent is covered by the Payment of Gratuity Act, 1972 and the workman concerned is covered by the provisions of the Payment of Gratuity Act, 1972 and considering the total length of service of thirteen years rendered by him and considering such evidence on record, the controlling authority has granted Rs.4485.00 as an amount of gratuity in favour of the petitioner.

The appellate authority has considered the fact that the concerned workman was promoted on 21st August, 1980 as work charge employee and for the period prior to that, from 1970 to 1980, he was a daily wager employee. Initially the controlling authority has rejected the application of the workman concerned for demand of gratuity on the ground that being a Government Department, said Act is not applicable. Said order dated 27th March, 1989 was subsequently reviewed by the controlling authority and an amount of Rs.4485.00 was granted by the controlling authority by order dated 12th

October, 1989. The appellate authority has counted the service rendered by the workman as daily wager and has excluded the service rendered by the workman as work charge employee for the purpose of payment of gratuity under the said Act. Before the appellate authority, the respondent has produced working days of the concerned workman but the same was not produced by the respondent before the controlling authority. The document which was not produced by the respondent before the controlling authority cannot be allowed to be produced for the first time before the appellate authority. By excluding the period of service rendered by the workman as work charge employee, the appellate authority has granted the amount of gratuity for the period of eight years which comes to Rs.2760.00 and has set aside the order dated 12th October, 1989 passed by the controlling authority. It is required to be noted that in entire order passed by the appellate authority, there is no discussion as to how the order passed by the controlling authority is illegal and contrary to law. The order passed by the appellate authority is also not supported by any reasons. The findings given by the appellate authority for its conclusion are without any basis. Mere mention in the PWD Manual that the work charge employees are covered by the provisions of the BCSRs is not enough. No doubt there is difference between daily wager employees and the work charge employees but it is having effect on the salary and other benefits but merely because the daily wager employee has been taken on the work charge establishment, by that alone, he cannot be considered to be permanent Government servant. Application of the provisions of the BCSRs alone is not sufficient to exclude the period of service rendered as work charge employee for the purpose of amount of gratuity. The appellate authority has not considered as to why the muster roll or the presence register or details of working days were not produced by the respondent establishment before the controlling authority. The appellate authority ought to have appreciated that any fresh material which was not produced before the controlling authority cannot be allowed to be produced for the first time before the appellate authority for the first time. The appellate authority has not discussed and has not given any reasons as to why and how the order passed by the controlling authority is bad in law. Therefore, according to my opinion, the appellate authority has committed error in setting aside the order passed by the controlling authority dated 12th October, 1989 and has also erred in ignoring the service of 1970-71 and 1979-80. I am of the view that once an employee is eligible to receive the amount of gratuity

and is satisfying eligibility criteria prescribed under the Payment of Gratuity Act, 1972, then, the working days are not of much relevance and, therefore, according to my opinion, the appellate authority has committed gross error in reducing the amount of gratuity payable to the workman by excluding the period of service rendered by the workman as work charge employee and, therefore, according to my opinion, the order passed by the appellate authority is required to be quashed and set aside.

Accordingly, order passed by the appellate authority in Appeal No. 202 of 1989 dated 30th May, 1990 is hereby set aside with a direction to the respondent to pay the remaining amount of gratuity of Rs.1725.00 (Rs.one thousand seven hundred twenty five only) to the petitioner with interest thereon at the rate of 9 per cent per annum from the date of the application submitted to the controlling authority till the date of actual payment of such amount, within three months from the date of receipt of copy of this order. This petition is accordingly allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

25.10.2002. (H.K. Rathod, J.)

Vyas